Hire Purchase Act 1967 or shall fail to make any other payment required to be made by him to the Owner under the terms of this agreement on the due date for payment thereof as prescribed by this agreement or if the Hirer shall fail to observe or perform any of the other terms and conditions of this agreement or shall suffer or do or omit to be done any act or thing whereby the Owner's rights hereunder shall or may be prejudiced (other than any proceedings by way of distress in which case Clause 7(m) hereof shall apply) then and in any of the said cases and from time to time as often as any of them shall happen it shall be lawful for the Owner subject to any statutory restrictions to the contrary:—

(a) Subject always to the Owner complying with the provisions of section 15 of the Hire Purchase Act 1967 in the case of any breach of the provisions of this Agreement relating to the payment of instalments to terminate the hiring without notice and resume possession of the vehicle and for this purpose to enter upon any premises where the vehicle may be found whereupon the provisions of section 17 of the Hire Purchase Act 1967 shall apply. The Hirer, in so far as it is in his power to do so, hereby irrevocably authorises the Owner or any person appointed in writing by the Owner to enter upon any premises for the purpose of resuming possession of the vehicle PROVIDED ALWAYS that for the purposes of section 24 of the Hire Purchase Act 1967 the licence hereby given shall not be assignable.

OR

(b) By written notice sent by post or otherwise to or left at the Hirer's last known address forthwith to determine and end the hiring and thereupon the Hirer shall no longer be in possession of the vehicle with Owner's consent and the Hirer shall not thereafter have any rights under this Agreement. Upon termination pursuant to this paragraph the Owner shall be entitled to recover on demand from the Hirer:—

(i) All arrears of hire owing up to the date of termination;

(ii) Any sum (other than hire) payable by the Hirer to the Owner under the terms of this agreement;

(iii) All costs and expenses incurred by the Owner (including legal costs as between solicitor and client) in endeavouring to resume possession of the vehicle or in endeavouring to enforce payment under this paragraph (b);

(iv) ...."

In short, these terms provide that the vehicle is not a chattel of the hirer which its landlord can distrain for arrears of rent and if the hirer defaults in the payment of any instalment, or for any other breach of the agreement, the agreement is determinable and upon such determination, the hirer can recover possession of the vehicle as well as claim arrears of rentals and all the costs incurred in the repossession.

On a proper and correct construction of the agreement, it is beyond argument therefore that the intention between the parties was that the property in the vehicle was not to pass to the respondent until full payment had been made and that until this time, the appellant had the right to repossess the vehicle on breach of any of its terms by the respondent. The repossession on November 2, 1975 was therefore not wrongful.

We consider that we can, from the numerous cases the appellant had to bring before the High Court and the Federal Court, take judicial notice of the fact that the *modus operandi* of the appellant is, by reason of the high costs of the vehicles it deals with, by hire-purchase as the only means by which under-capitalised contractors, as most of them are, could acquire the use of them: *Narasingerji Gyanagerji* v. *Ponuganti Parthasaradhi.*[5] We see no reason to believe that the agreement is anything but a hire-purchase agreement and under its terms and under the Hire Purchase Act the hiror has an immediate right to possession on an instalment falling into arrears, *Moorgate Mercantile Co. Ltd.* v. *Finch & Anor.*,[6] subject under the Act to the due observation by the hiror of the various steps it must take before exercising that right.

In our view, therefore, this case is on the undisputed facts and as a matter of proper construction of the agreement and the application of the proper law, an eminently fit one for proceedings in lieu of demurrer under Order 25 Rules of the Supreme Court. The respondent can have no action at law on a hire-purchase agreement for repossession on its default of payment of the rental or in a court of morals (which fortunately this court is not) against the appellant.

The appeal must be allowed with costs here and in the court below. The statement of claim is ordered to be struck out.

Appeal allowed.

Solicitors: *Skrine & Co.; Jagjit Singh & Co.*

WOO YEW CHEE v. YONG YONG HOO

[F.C. (Raja Azlan Shah Ag. C.J. (Malaya), Wan Suleiman and Syed Othman F.JJ.) August 9, 10 and October 16, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 64 of 1978]

Landlord and Tenant — Occupation of premises — Whether license or tenancy — Nature and quality of occupancy — Unregistered sub-lease — Valid as agreement for sub-lease — Whether premises rent controlled — Claim for refund of tea-money — National Land Code, s. 222(4) — Control of Rent Act, 1966, s. 23.

In this case the appellant was the tenant of a shop-house built before 1948. He carried on the family business dealing in textile and cosmetics. On July 27, 1968 he entered into an agreement with the respondent whereby he allowed the respondent to occupy the front left portion and a middle portion of the ground floor for a period of 10 years at a monthly rental of $170. There were differences between the parties and on June 15, 1972 the respondent filed a suit claiming return of $15,000 tea-money alleged to be paid by him to the appellant. The appellant counterclaimed for possession of the premises alleging breaches of the tenancy agreement. The learned trial judge held that the respondent had proved his claim against the appellant and ordered him to return the $15,000. He also found that there was no evidence to support the allegation that the respondent had committed breaches of some of the terms of the agreement and he therefore dismissed both the defence and the counterclaim. The learned trial judge however did not deal with the other matters raised in the defence namely (a) that the agreement was only a sharing arrangement and a licence; (2) that the licence was void owing to non-registration and (3) that the Rent Act did not apply as the premises had become decontrolled when the appellant and his father purchased it in 1962. The appellant appealed.

Held: (1) the learned trial judge was right in dismissing the defence and counterclaim as it was clear on the evidence that it was the appellant who had broken the terms of the agreement;

(2) looking at the indications of the agreement as a whole, a relationship of landlord and tenant was intended between the parties. There was nothing in the evidence to negate and much which supported that there was a tenancy under the Control of Rent Act, 1966;

(3) in this case there was sufficient evidence to show that it was at least more probable than not that the $15,000 tea-money was demanded and received by the appellant and there

was no reason for the appeal court to interfere with the finding of the trial judge on this point;

(4) by the doctrine of equitable intervention the purported sub-lease would be treated as an agreement for a sub-lease and since it had been partly executed by possession having been taken under it, the equitable remedy of specific performance would be peculiarly appropriate;

(5) the general principle for Rent Act protection has always been that the subject-matter of protection must be "premises" let or sublet as a separate dwelling or partly for human dwelling and partly for business. Once this is accepted as the true principle, then when the premises was purchased in 1962 it did not cease to be controlled premises and that character did not change with the coming into force of the Control of Rent Act, 1966, for the simple reason that the right of property cannot be taken away by a repealing statute, unless there is an express or implied intention to do so.

Cases referred to:-

(1) *Rede* v. *Farr* 105 E.R. 1188, 1189.
(2) *Abouloff* v. *Oppenheimer* (1882) 10 Q.B.D. 295, 303.
(3) *Gallie* v. *Lee* [1969] 1 All E.R. 1062, 1081.
(4) *Addiscombe Garden Estates Ltd.* v. *Crabbe* [1958] 1 Q.B. 513.
(5) *Chin See Lian* v. *Ng Wan Pit* [1973] 1 M.L.J. 115.
(6) *Marchant* v. *Charters* [1977] 3 All E.R. 918, 922.
(7) *Barnes* v. *Barratt* [1970] 2 Q.B. 657, 669.
(8) *Odhermal* v. *Tan Cheng Lock and Estate and Trust Agencies (1927) Ltd. & Anor.* [1953] M.L.J. 43.
(9) *Somma* v. *Hazelhurst* [1978] N.L.J. 463.
(10) *Richard Evans & Co. Ltd.* v. *Astley* [1911] A.C. 674, 687.
(11) *Haji Abdul Rahman* v. *Mohamed Hassan* [1917] A.C. 209.
(12) *Lin Nyuk Chan* v. *Wong Sz Tsin* [1964] M.L.J. 200.
(13) *Yong Tong Hong* v. *Siew Soon Wah* [1971] 2 M.L.J. 105.
(14) *Inter-Continental Mining Co. Sdn. Bhd.* v. *Societe des Etains de Bayas Tudjuh* [1974] 1 M.L.J. 145.
(15) *Parker* v. *Taswell* (1858) 2 De G. & J. 559, 571.
(16) *Steadman* v. *Steadman* [1974] 2 All E.R. 977.
(17) *Lloyd* v. *Cook* [1929] 1 K.B. 103, 148.

FEDERAL COURT.

Atma Singh Gill for the appellant.

James Ponniah for the respondent.

Raja Azlan Shah Ag. C.J. (Malaya): 27 Birch Road, Seremban is an ordinary one-storey shop-house. It was built before 1948 and therefore subject to the Control of Rent Act. Prior to 1962 the appellant's father was the tenant of the whole shop-house. He carried on the family business dealing in textile and cosmetics under the style of Kwong Fatt on the ground floor. The family lived on the first floor. In 1962 the appellant and the father jointly bought the said shop. They continued with the family business as before. On July 27, 1968 he entered into a written agreement with the respondent allowing the latter to occupy the front left one-half portion measuring 40 ft. in length and a middle portion measuring 5½ ft. by 18 ft., both on the ground floor, for a period of 10 years from September 15, 1968 at a monthly rent of $170 payable in advance. It was also agreed that the respondent should share with the appellant and his family the use of the kitchen, bathroom and toilet which were situated at the back of the ground floor.

For a while all went well. The parties were on good terms. Although the key to the front door was always kept by the appellant, he was always ready and willing to open it for the respondent and his employees whenever required to do so. The respondent alleged that he was entitled under the terms of the agreement to a set of keys, but that was denied by the appellant. He had on several occasions asked for it but was turned down. The issue seemed not to be important then. He was allowed under the terms of the agreement to build two cubicles and doors to the middle portion for the purpose of keeping patent medicines and Chinese drugs and to fix a wash basin in one of the cubicles. Rents were paid and receipts were issued and that was so even after 1972.

Trouble started in April 1972 when the appellant installed a cupboard right across the common passage-way causing a partition of the ground floor, and thus obstructing the said passage-way. The respondent objected to the intrusion and on April 15, 1972 wrote a letter asking the appellant to remove it. Old matters were then brought up. The respondent pursued his request for a set of keys to the front door otherwise he said he would install his own lock. The appellant replied saying he put up the partition because he had been losing stocks from his shop. He accused the respondent of committing breaches of the tenancy agreement, e.g., failing to pay rent punctually, committing acts of nuisance in allowing his employees to sleep on the premises and allowing them to practise karate at night. On June 5, 1972, the respondent demanded the return of $15,000 "tea-money" which he said he paid the appellant as a condition of the tenancy agreement. He further accused the appellant with installing more cupboards on June 4, thus partitioning the shop further, and causing further inconvenience and annoyance.

On June 15, 1972 the respondent filed the present suit claiming for the return of the said $15,000 and for an order that the appellant deliver to him a set of keys to the main door of the premises. The appellant counter-claimed for possession of the premises alleging breaches of the tenancy agreement. In an amended defence and counter-claim, he charged the respondent with installing separate electricity and water meters and a separate lock to the front door. His argument was based on three main grounds. First, it was said that the agreement was only a sharing arrangement under possessory licence of the sub-let portion, the kitchen, bathroom and toilet, plus the electricity and water meters, and as the respondent was never allowed exclusive occupation of any part of the said premises, the appellant throughout having the key to the main door, whereby he had dominion and control of the premises sub-let, the Control of Rent Act, 1966 had no application. Secondly, it was said that the said licence was void under section 222(4) of the National Land Code owing to non-registration and lack of identification. Thirdly, it was submitted that the Rent Act did not apply as the premises had become de-controlled when the appellant and his father purchased it in 1962.

The learned judge held that the respondent had proved his claim against the appellant and ordered him to return the $15,000. His reasons were as follows:

"I have come to the conclusion that the plaintiff has succeeded in proving his case against the defendant. The evidence adduced on behalf of the plaintiff had a ring of truth and I accepted it. In support of his testimony that he had given $15,000 as tea-money to the defendant the plaintiff produced three cheques. The first was dated July 26, 1968 a day before the tenancy agreement was signed. An endorsement on the reverse of this cheque is not wholly legible but two words could be made out — Woo Yew. The defendant's name is Woo Yew Chee. I accepted the evidence of PW4 Loo Chin Loo who had introduced the plaintiff to the defendant. This witness had attended three or four meetings between the parties and the sum of tea-money was discussed and the amount fixed at $15,000. I have no reason to disbelieve any of the plaintiff's witnesses and accepted their evidence as true.

On the other hand the evidence adduced on behalf of the defendant was in my view not altogether true and I did not accept the defendant's denials that he had received the $15,000 as tea-money. In cross-examination he admitted that the plaintiff had offered a cheque for $5,000 but he said that he had not accepted the money. He said he refused to accept it because the plaintiff had told him that the money was from an unknown source and he did not know for what purpose the plaintiff had offered the $5,000 and he refused to accept the cheque. This in my view rather tends to give credence to the evidence of the plaintiff that he had given a $5,000 cheque a day before the tenancy agreement was signed and the other cheques amounting to $15,000. The reasons given by the defendant as to why he had not accepted the $5,000 cheque do not appear to be sound and I believe that in all probability he did accept this cheque as well as the remaining sums totalling $15,000."

The learned judge also held that the intention of the parties was to set up a monthly tenancy and not a sharing arrangement or occupation by possessory licence. He added:

"The parties are described in the agreement as sub-tenant and chief tenant, the 'tenancy' is for a term not exceeding 10 years and rent of the 'demised premises' is $170 per month. In his evidence in court the plaintiff made no mention of any sharing arrangements or occupation by possessory licence. 'I entered into a tenancy agreement with him (plaintiff) on July 27, 1968' is what he said about his relationship with the defendant in respect of the premises."

The prayer for delivery of a set of keys was not pursued at the trial and therefore no order was made on it. The learned judge found no evidence to support the allegation that the respondent had committed breaches of some of the terms of the agreement. He therefore dismissed both the defence and the counterclaim. I agree. In the absence of solid evidence, it strains credulity to suggest that the respondent was at fault. In my opinion it was the appellant who was the author of the trouble in putting up the "Berlin Wall". I do not think that this court should assist him who had shown *prima facie* to have trodden roughshod over the respondent's rights. It is a universal principle of law that the court would not allow a party to take advantage of his own wrong (see *Rede* v. *Farr*[1]). This principle was in the early cases applied to grants of leasehold interest where a lessee sought to take advantage of his own breach of covenant by calling into operation a clause which rendered the lease void in such an event. This principle has been extended to contracts generally (see *Abouloff* v. *Oppenheimer*;[2] *Gallie* v. *Lee*[3]). However, I must express my disappointment that the two remaining questions raised by the appellant were not considered by the learned judge, viz., whether the purported licence was void because it did not comply with the provisions of the National Land Code, and whether the premises became de-controlled when the appellant and his father purchased the whole of the shop-house in 1962.

I now turn to the crux of the matter: was the transaction a licence or a tenancy? What is the test to be applied? It is now well known that the law will always look beyond the terminology of the agreement to the actual facts of the situation (see *Addiscombe Garden Estates Ltd.* v. *Crabbe*[4]). The reason is because of the number of sham agreements purporting to create no more than mere licences which are designed to circumvent the protective provisions of the Control of Rent Act. It is no longer a question of words, but substance. It is no longer a question whether the occupation is permanent or temporary. All these are factors which may be relevant in arriving at a decision whether a particular transaction is a licence or a tenancy but none of them is conclusive. The ultimate test is the nature and quality of the occupancy: whether it is intended that the occupier should have a stake in the premises sub-let or whether he should have only a personal privilege. Mohamed Azmi J. applied this test in *Chin See Lian* v. *Ng Wan Pit*.[5] That seems to me to be the correct principle, and it is entirely in accordance with the view taken by Lord Denning M.R. in *Marchant* v. *Charters*[6]:

"It does not depend on whether he or she has exclusive possession or not. It does not depend on whether the room is furnished or not. It does not depend on whether the occupation is permanent or temporary. It does not depend on the label which the parties put on it. All these are factors which may influence the decision but none of them is conclusive. All the circumstances have to be worked out. Eventually the answer depends on the nature and quality of the occupancy. Was it intended that the occupier should have a stake in the room or did he have only permission for himself personally to occupy the room, whether under a contract or not, in which case he is a licensee?"

Applying this principle, I turn first to the agreement itself. The said agreement was executed at the office of an advocate and solicitor. The appellant was described as "the chief tenant" and the respondent as "the sub-tenant", although there was no clear evidence to show that appellant was such as that described in the document. There were various restrictions on the part of the sub-tenant notably clause 3(3) which expressly permitted the chief tenant to enter on the premises to inspect its condition; clause 3(4) which permitted the sub-tenant to assign, sub-let or part with possession of the demised premises with the written consent of the chief tenant; clause 3(5) which allowed any alteration or additions with written consent; clause 3(7) which restricted the sub-tenant to carry on the business of a Chinese druggist store only; clause 3(9) which prohibited against partitioning the demised premises so that the passage-way separating it from the landlord's portion of the ground floor should remain free and accessible at all times to the parties, members of their families and invitees; clause 3(11) which restricted the use of the middle portion for storage purposes only and, perhaps most cogent of all, there was a term for termination of the tenancy upon breach of covenant, and for continuation of the tenancy on giving six months' notice before expiry of the current tenancy. There was also a covenant for quiet and uninterrupted enjoyment.

Those provisions seem to me to point to a tenancy. Looking at the indications in the terms of the agree-

ment as a whole I find in fact that a relationship of landlord and tenant was intended. There were in this case some of those features present which in *Addiscombe Garden Estates Ltd.* v. *Crabbe, ante,* led the court to hold that the intention of the parties was to create a tenancy. In that case there was a clause expressly permitting the grantors to enter on the premises to inspect the plant which would have been unnecessary had they had a right to enter on the premises apart from the agreement. There was a covenant for quiet and uninterrupted enjoyment by the grantee, a covenant appropriate to a lease but not appropriate to a licence. There was also a term for re-entry upon breach of covenant, which is a term appropriate only to a tenancy. There was, further, a term against assignment, which is an element which may be taken into account when determining whether any particular agreement is a licence or a tenancy, because a tenancy involves an interest in land, and it is normally characteristic of that interest that it is assignable (see *Barnes* v. *Barratt*[7]).

Next it was said that this was a sharing arrangement only and nothing else. The respondent had no exclusive occupation of the portion sub-let because the key to the main door was always with the appellant, indicating that he had control and dominion of the premises sub-let. This contention is based on a false premise. Possession of keys of the premises is neither here nor there (see *Odhermal* v. *Tan Cheng Lock & Estate & Trust Agencies (1927) Ltd. & Anor.*[8]). I think the respondent had exclusive possession. His evidence at the trial gives an indication:

"*Q.* Could he (appellant) come and put his own goods in your (respondent's) side?
A. No, that he could not.
Q. Could he use your portion for any purpose he wanted?
A. He — he cannot."

That was not challenged. In any event exclusive possession is no longer a decisive test. That is an old law which is now gone. The nature and quality of the occupancy must be looked at with a view to determine its true character. In *Somma* v. *Hazelhurst*[9] the court considered the terms of the agreement before it and concluded that whether or not an arrangement constitutes tenancy or licence is no longer a matter of exclusive possession, or even any of the traditional indicators of tenancy, but simply that of the intention of the parties.

I think it is plain that in this case there was nothing in the evidence to negate and much which supported the view that there was a tenancy under the Control of Rent Act, 1966.

It was then cogently submitted and contended that the learned judge erred in ordering the refund of the $15,000. Apart from vague and unreliable pieces of evidence, it was urged that the respondent had not proved that the appellant had cashed any of the alleged cheques given to him and further that the alleged signature of "Woo Yew" on cheque Exhibit P1A was that of the appellant. In my opinion, the time-honoured question that I have to determine, and it is a question of law, is whether it was reasonably open to the learned judge on the evidence to find that the $15,000 tea-money was paid by the respondent to the appellant as a condition of the tenancy agreement. There can at least be no doubt that it was open to the learned judge to arrive at that finding, but the real difficulty is whether there was sufficient evidence to justify that finding.

In a civil case one needs only circumstances raising a more probable inference in favour of what is alleged. An inference from an actual fact that is proved is just as much part of the evidence as the fact itself. Where direct proof is not available it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference; they must do more than give rise to conflicting inferences of equal degree of probability so that the choice between them is a mere matter of conjecture (see *Richard Evans & Co. Ltd.* v. *Astley*[10]). By more probable is meant no more than that upon a balance of probabilities such an inference might reasonably be considered to have some greater degree of likelihood. It is to be noted that once the right principle has been applied the appellate court has said over and over again that this type of case becomes a matter of fact for the learned trial judge.

I should think that applying these principles to the case before us, inferences sufficiently appeared from the circumstances to which the learned judge had referred that made it at least more probable than not that $15,000 tea-money was demanded and received by the appellant.

Next it was said in somewhat general terms that the agreement was void for lack of registration and identification. Section 222(4) of the National Land Code was cited in support of the latter proposition. The sub-section reads as follows:

"(4) Every such sub-lease shall be granted by an instrument in Form 15B; and in any case where the sub-lease relates to a part only of the land comprised in the grantor's lease or sub-lease, there shall be attached to the instrument a plan and description sufficient to enable the part to be accurately identified."

What the argument boils down to is that just because the sub-lease did not comply with the provisions of section 222(4) of the National Land Code the said lease was void. I think that argument is without merit. We have heard that line of argument before. It was raised and answered in the following cases: in *Haji Abdul Rahman* v. *Mohamed Hassan*[11] the Judicial Committee of the Privy Council held that an agreement, not in registrable form, to transfer back certain land upon a certain contingency happening, while useless as a transfer or burdening instrument, was good as a contract; in *Lin Nyuk Chan* v. *Wong Sz Tsin*[12] this court held that failure to comply with the registration provisions of section 88 of the Sabah Land Ordinance did not render the agreement for a lease invalid and unenforceable; in *Yong Tong Hong* v. *Siew Soon Wah*[13] this court held that a non-registration 30 year lease was treated as a specifically enforceable agreement for a lease; in *Inter-Continental Mining Co. Sdn. Bhd.* v. *Societe des Etains de Bayas Tudjuh*[14] this court again held that a purported sub-lease not in statutory form was good as an agreement for a sub-lease and specifically enforced it. In all these cases equity intervened and treated an imperfect lease as an agreement for a lease provided it is otherwise valid and enforceable. In the present case, by the

doctrine of equitable intervention the purported sub-lease would be treated as an agreement for a sub-lease and since it had been partly executed by possession having been taken under it, the equitable remedy of specific performance would be peculiarly appropriate. The facts of the present case make it more analogous to such cases as *Parker* v. *Taswell*[15] where the uncertainty of a contract was urged but where performance had been partly carried out. Lord Chelmsford had this to say when decreeing specific performance (page 1111): "It must be borne in mind that this agreement has been partly executed by possession having been taken under it; and there are many authorities to shew that in such a case the court will strain its power to enforce a complete performance.... The agreement, moreover, is admitted to be sufficiently certain as to all the substantial parts of it, and the only portions of it to which uncertainty is attributed are subordinate matters. No authority has been cited to shew that in such a case specific performance may not be decreed."

Steadman v. *Steadman*[16] is a modern authority for the proposition that a grant of specific performance based on an act of part performance must be referrable to an existing contract between the parties. Viscount Dilhorne and Lord Simon (at pages 992, 999) accepted the statement in *Fry* on Specific Performance (6th ed. (1921) page 278):

"The true principle however of the operation of acts of part performance seems only to require that the acts in question be such as must be referred to some contract, and may be referred to the alleged one; that they prove the existence of some contract and are consistent with the contract alleged."

It remains to deal with the argument as to the effect of the purchase of the premises in 1962 when there was no provision of decontrol under the Control of Rent Ordinance, 1956 but became law as from January 1, 1967 when the Control of Rent Act, 1966 came into force. It was contended that the appellant and his father, the latter having been the tenant of their predecessor in title, ceased to be a tenant and became the owner by merger or surrender by operation of law. As such, the premises became decontrolled. It was then argued that as there was no tenancy of a controlled premises, the Control of Rent Act, 1966 did not apply. *Lloyd* v. *Cook*[17] and a series of related cases were cited in support of the argument. I have come to the conclusion that these cases, however, turned on the interpretation of a statute basically different from our own and particularly on the effect to be given to the decontrol provision for which there is no counterpart in the Control of Rent Ordinance, 1956. In my view, the general principle for Rent Act protection has always been that the subject-matter of protection must be "premises" let or sub-let as a separate human dwelling or partly for human dwelling and partly for business. Once this is accepted as the true principle, then when the premises was purchased in 1962, it did not cease to be controlled premises, and that character did not change with the coming into force of the Control of Rent Act, 1966, for the simple reason that the right of property cannot be taken away by a repealing statute, unless there is an express or implied intention to do so. What section 23 of the Control of Rent Act, 1966 envisages is that on the happening of a certain event, the landlord may apply to the Rent Tribunal for a certificate and upon service of a copy of such certificate, the premises concerned shall cease forthwith to be controlled premises. That requirement was not fulfilled in the present case and that is only possible after January 1, 1977 because the said Act has no retrospective effect.

For the above reasons I would dismiss the appeal with costs.

Wan Suleiman and **Syed Othman F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Gill & Tang; Stanley Ponniah, Ng & Soo.*

PENGARAH TANAH DAN GALIAN, WILAYAH PERSEKUTUAN* v. SRI LEMPAH ENTERPRISE SDN. BHD.

[F.C. (Suffian L.P., Raja Azlan Shah Ag. C.J. (Malaya) and Chang Min Tat F.J.) September 12 and October 21, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 94 of 1978]

Land Law — Applications by developer for sub-division of its land, for conversion of user and surrender of part of land — Land held in perpetuity — Whether Government could impose condition that developer accepts a 99 year lease in exchange — Condition not relating to permitted development and unreasonable — Applications remitted to Government for reconsideration — Federal Constitution, art. 13(1) — National Land Code, ss. 92(2), 124, 136, 137, 138, 196, 200, 201, 202 and 203.

Administrative Law — Applications by developer for sub-division of land for change of express condition of title and for surrender of portion of land — Condition imposed by Government that the developer should accept a 99 year lease in exchange for grant in perpetuity — Condition not relating to permitted development and unreasonable — Excess of power making act invalid as being ultra vires — Applications remitted to Land Executive Committee for reconsideration in the light of judgment of the Court — To what extent order of court should be complied with — National Land Code, ss. 92(2), 124, 136, 137, 138, 196, 200, 201, 202 and 203 — Federal Constitution, art. 13.

Practice and Procedure — Appeal under section 498 of the National Land Code — Whether properly brought by originating motion — Proper party should be the Land Executive Committee — Grounds of appeal not set out in originating motion but in affidavit in support — Service of originating motion — Whether appellant out of time — R.S.C., 1957, O. 58 r. 2, O. 59 r. 13 and O. 70.

Constitutional Law — Right of property — Federal Constitution, art. 13.

In this case the applicant company was the registered proprietor of a piece of land held in perpetuity. The land was in the Federal Territory and the applicant applied to the Federal Government for sub-division of the land and for conversion to have the express condition relating to the user of the land amended to allow the applicant to put up a hotel for which planning permission had been granted. It also applied to surrender part of the land to Government for use as service roads, side and back lanes. The matter was referred to the Land Executive Committee and subsequently the Director of Lands and Mines, Federal Territory,

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* In this case the appellant in the appeal was the Land Executive Committee, and not, as stated in the appeal record, the Pengarah Tanah dan Galian. However, the parties made nothing of this, presumably because the Government agree that whoever is cited as appellant the Government will be bound if the appellant loses.
— Mng. Ed. M.L.J.